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Paper No. 6

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AUG 1 2 2002

In re Application of
Caronni, et al.
Application No. 10/073,131
Filed: February 13, 2002
Attorney Docket No.: 06502.0356
For: SYSTEM AND METHOD FOR
ACCESSING FILE SYSTEM ENTITIES

OFFICE OF PETITIONS
DECISION DISMISSING
PETITION UNDER 37 CFR
1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed
June 11, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of
this decision to reply, correcting the below-noted deficiencies.
Any reply should be entitled "Request for Reconsideration of
Petition under 37 CFR 1.47(a)," and should only address the
deficiencies noted below, except that the reply may include an
oath or declaration executed by the non-signing inventor. Failure
to respond will result in abandonment of the application. Any
extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed February 13, 2002
without an executed oath or declaration and naming Germano
Caronni and Sandeep Kumar as joint inventors. Accordingly, on
March 11, 2002, a "Notice to File Missing Parts of Application"
was mailed, requiring an executed oath or declaration, and a
surcharge for its late filing.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof
that the non-signing inventor, or in the present case, the non-
signing legal representative of the deceased inventor, cannot be
reached or refuses to sign the oath or declaration after having
been presented with the application papers (specification, claims
and drawings); (2) an acceptable oath or declaration in
compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee;
and (4) a statement of the last known address of the non-signing
inventor.

Applicant lacks requirements (1) and (2) set forth above.

As to item (1), the petition lacks sufficient evidence that the
non-signing inventor cannot be reached, was ever presented with a
copy of the application papers (specification, claims, drawings,
and oath or declaration), or, having been presented with the
application papers, refused to sign the oath or declaration.

Petitioner alleges that the non-signing inventor despite diligent

effort cannot be reached or located. The declaration of Walter Davis states the application papers were e-mailed and mailed to the inventor and that to date the inventor has not responded. Declaration further states he was informed the inventor was "on a leave of absence in India."

The fact that the inventor is "on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47." See, MPEP 409.03(d). Moreover, where inability to find or locate a named inventor(s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. The statement(s) of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search of the internet, telephone directories, and international registries should be undertaken in regions where it is suspected the non-signing inventor may reside. Petitioner should reference and supply evidence of any such searches in a renewed petition. See, MPEP 409.03(d).

Any renewed petition must be supported by evidence to establish the inventor cannot be reached or located or the inventor refuses to sign an oath or declaration after having been presented with the application papers.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. The declaration presented with the instant petition contains alterations that have not been initialed as required by 37 CFR 1.52(c).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.


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for Patent Examination Policy